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October 2, 2009

Mr. Matthew Josephs
Manager, NMTC Program
CDFI Fund
601 13th St. NW, Suite 200 South
Washington, D.C. 20005

Dear Matt:

The Massachusetts Housing Investment Corporation and its certified Community Development Entities (MHIC) are writing in response to the CDFI Fund's August 3, 2009 request for public comment on the New Markets Tax Credit (NMTC) application.

MHIC has been awarded NMTC authority totaling \$364 million in Rounds I, II, III, IV, and VI of the NMTC program. As of this date, MHIC has registered QEIs totaling \$277,500,000 in 33 projects and has committed another \$59 million to 7 projects scheduled to close prior to year end. MHIC is a mission-driven organization financing high-impact economic development projects and growing businesses in the most distressed communities of our New England service area. The NMTC program has become a vital tool for job creation, revitalization, and critical service delivery in the communities we serve.

MHIC is also an active member of the NMTC Coalition which is a national membership organization that advocates on behalf of the NMTC Program. The Coalition membership includes Community Development Entities (CDEs), investors, and other community development professionals using the NMTC to revitalize distressed urban neighborhoods and rural areas.

We appreciate the opportunity to respond to the CDFI Fund's request for comment on the NMTC application. MHIC has discussed and contributed suggestions to the separate comments being submitted by the NMTC Coalition. MHIC is generally supportive of the NMTC Coalition's comment letter and is writing this letter to underscore points of particular import to its NMTC work.

MHIC is submitting the following comments on a selection of the questions posed in the "Notice and Request for Comments" as published in the Federal Register (Vol. 74, No. 147, August 3, 2009):

2. Whether the thresholds for committing to flexible rates and terms (Question 17) should be adjusted in light of the current economy;

MHIC believes that the thresholds remain appropriate. With capital markets in upheaval recently, a rate that was 50% below market two years ago may be less than or greater than that now for a given capital market segment such as mezzanine capital or senior commercial debt. As a result, allocatees need flexibility in determining the true level of risk and the appropriate market comparisons for any given transaction. A simple basis point reduction below a comparable market rate would be less meaningful in a high rate environment, but could be impossible to meet in a very low rate environment. Combining below-market interest rates with additional indicia for flexible terms and conditions as currently described in the application is appropriate.

3. Whether the Fund should change the way in which it applies the unrelated party rules and apply it before rather than after the investment is made;

MHIC supports the CDFI Fund's recommendations on this issue--that the related party test be applied prior to, not after the QLICI is made. MHIC also supports the Coalition's recommendation that the test be applied to the relationship between the investor and QALICB, both before and after the QLICI is made. The latter approach appears to offer even more assurance that no party receives the inappropriate benefits of NMTC investment that the statute intended to avoid. Such a change will yield a number of benefits. Transactions combining historic and new markets tax credits will no longer be required to rely exclusively on the master tenant pass-through structure, which is particularly burdensome for small projects because the relative complexities of this structure increase transactions costs, regardless of the size of the transaction. Amending the related party rule as suggested here will also make it possible for CDEs to use NMTC capital to make certain kinds of equity investments, primarily preferred and common stock purchases. To allow CDE equity investments in QALICBs that are structured, by necessity, as limited liability companies or partnerships, the safe harbor rule for calculating CDE income and allowable CDE distributions would also have to be revised. As it stands now, the risk of QALICB operating losses, which would reduce allowable CDE distributions under the safe harbor rule, makes it virtually impossible for a CDE to make such an investment when a leveraged structure is used and the upper tier investment fund is relying on a certain level of CDE distributions to service hard debt. In such cases, which are very common in QALICBs that are operating businesses or other kinds of for-profit ventures, even if the CDE or the QALICB has the cash to make the distributions that would keep the leveraged loan debt service payments current, operating losses would prevent that cash from being so applied because the CDE cannot risk that the distribution will be characterized as capital redemption, triggering a recapture event. This situation effectively rules out a CDE equity investment in a start-up venture (structured as an LLC or LP), where start-up losses are anticipated, and even in most other cases where operating losses are not expected, but are a possibility during the 7-year NMTC compliance period.

6. Whether, when looking at a prior applicant's use of previous allocations, the QEI issuance test should be replaced with data on the transactions completed;

As the Fund suggests and the Coalition has previously recommended, measuring the amount of cash that a CDE has been able to deploy is a stronger barometer of success than the CDE's ability to secure investors. Recasting the test accordingly would also create a level playing field for CDEs that are affiliated with an investor and those that are not since affiliated investors can self issue QEIs just to meet the CDFI threshold even if they have not yet identified a QLICI.

However, converting from the QEI issuance test to measuring solely on the basis of cash invested will not eliminate an unintended consequence of the present system. Measuring cash only provides a very compelling incentive for CDEs to disproportionately weigh "readiness to proceed" when allocating NMTC investment. Unfortunately, it is often the case that high-impact economic development projects located in distressed communities encounter a long predevelopment period. A sustained commitment of NMTC investment to these projects is often a critical sign of confidence, enabling the sponsor to complete the fundraising necessary to achieve financial feasibility. Consequently, MHIC urges the Fund to consider weighing both QLICI commitments and cash outlays as part of the QEI issuance test. We also request to move the measurement date for the prior year's allocation from June to September. With award announcements in October, it is usually January before allocation agreements and CDE certifications are complete. By then, CDE's are in the thick of preparing the new application, pushing a focus on closing deals and funding QLICI's to April.

7. Whether the Fund should consider much larger awards, for example \$250 million, in return for an agreement an applicant would not apply again for some period of time;

MHIC urges the Fund to implement a pilot program immediately to test the feasibility of a 3-year award up to a maximum of \$300 million. The costs of the present annual allocation system are very great-- it increases the CDE's costs of administering the NMTC program and distracts time and energy from identifying, underwriting, and making high-impact, urgently needed community investment. Given the large investment in staff required to successfully implement the program, the annual approach also imposes a great degree of risk on CDEs that have made the program an integral part of their work. As part of the guidelines for such a program, MHIC requests that if a CDE applies for the maximum 3-year award and receives significantly less, that it has the option to reapply the following year if it demonstrates adequate progress. Allowing for multi-year awards would also alleviate the downside of the annual QEI issuance test as described under item #6 above.

9. Whether there are steps the Fund could take to diversify the uses of the credit to a broader set of investments, such as small business lending, loan purchases, investments in other CDEs, including CDFIs, and so forth;

Two years ago, MHIC committed itself to broaden its NMTC program offerings to include gap financing for operating businesses that were growing (creating jobs) or in need of stabilizing its finances and were not able to meet these financing needs through banks or other conventional sources. MHIC's concept is to use NMTC capital to provide the kind of patient, flexible capital that small business advocates, practitioners at state and non-profit loan funds and business owners themselves tell us is in short supply.

MHIC has designed a good product and successfully implemented its program. However, the NMTC would be more broadly useful for filling gaps in business finance if certain obstacles could be removed, described as follows.

- NMTCs have limited application to business financing without the participation of banks as leveraged lenders. Few banks are willing because the NMTC leveraged structure cannot deliver on their amortization requirements when financing equipment or working capital.
- Inadequate amortization creates too much refinancing risk for lenders and borrowers.
- Standstill requirements (limiting recapture risk) imposed on lenders by NMTC investors further deter leveraged lenders.
- Please also see discussion about barriers to CDE equity investments in QALICBs under item #3 above

While the interconnectedness of the programmatic and regulatory changes that would be required merits a task force to determine the optimal solution, MHIC would like to offer the following recommendations:

- As a first step, implement the recommendation outlined in CEI Capital Management's comment letter, also submitted to the CDFI Fund on this date, as summarized here: Allow amortization of QLICI principal back to the CDE of up to \$750,000 (in aggregate for all QLICIs made to any single QALICB) or 15%, whichever is greater, with minimum amortization schedules of seven years or greater, for total QLICIs to a single business of up to \$5 million. This approach reduces refinancing risk and should attract more lenders to the program, although it may not go far enough with regard to amortization. Moreover, the business must continue to pay interest on the original loan amount even though its loan balance is decreasing (in order send sufficient cash to the upper tier investment fund to keep leveraged lender debt service payments current). Thus, some of the benefit of the NMTC subsidy is lost.
- More significant changes would make more efficient use of the NMTC subsidy while also significantly increasing the number of banks willing to participate as leveraged lenders. To this end, MHIC recommends that the safe harbor definition of CDE income and the substantially all test for determining the portion of the QEI that must be invested in QLICIs be

broadened to allow annual amortization of the QLICI in an amount equal to up to one seventh of the leveraged loan and allow this payment to be distributed by the CDE to the upper tier investment fund as principal payments for the sole purpose of amortizing the leveraged loan.

- It may be desirable to limit such special rules to a subset of QLICIs, such as those not secured by real estate, those QLICIs to a single QALICB totaling less than \$5 million, and/or to QALICBs that meet a special definition of operating business. Starting with a pilot program may also be desirable.
- It would also be helpful to make the test that limits nonqualified financial assets to 5% of the QALICB's total unadjusted assets more flexible, such that if the leveraged lender requires the business to create a sinking fund or reserve, the test would not be violated.
- At no time would any of these rule changes be allowed to result in return of any portion of the NMTC investor's capital.
- MHIC also recommends that any task force charged with investigating these issues also consider how recapture penalties for investors might be revised to induce investors to provide more flexibility on its standstill requirements of lenders.

10. Whether there are other sources of data, that is more current than the decennial census, that the Fund should use to verify what census tracts are "severely" distressed.

MHIC is supportive of utilizing more current sources of census data to identify severely distressed census tracts, and the effect of the recession on many areas of the country is good reason to allow for updating. Rural areas offer some stark examples, where the local economy is highly vulnerable to the economic well-being of a single employer or industry. In rural Beechers Falls, Vermont, the Ethan Allen furniture plant was closed a few months ago, eliminating 500 jobs and devastating the economy of this isolated area.

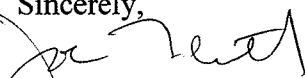
MHIC also believes that the threshold qualification of NMTC eligibility for rural census tracts should allow for updating. The nature of the median calculation and the physically larger census tracts in rural areas results in disqualifying census tracts whose low-income communities the NMTC program was designed to assist. For example, in many of New England's rural areas, more affluent people have moved in from out of state, perhaps tele-commuting or semi-retired; this may push the median over the 80% threshold but does little to improve the economic circumstances of the area's low-income residents. Consequently, MHIC recommends that ineligible rural census tracts that contain a qualifying census block (that is, a census block whose median family income is less than the applicable 80% standard) be eligible for a waiver.

On other program-related issues, although not in response to an item in this specific request for comments, MHIC would like to ask the Fund to consider pursuing two changes with respect to rural areas.

- (1) The definition of low-income person was recently changed from a "Non-metro family earning less than 80% of statewide FMI " to a "non-metro family earning less than statewide non-metro FMI." This change has the effect, in most areas, of requiring that an LIP in a rural area is lower income than an LIP in a metropolitan area. At the same time, the benchmark for an LIP in a metro area was changed from the statewide area median to the metro area FMI. We request that both definitions be changed back to a statewide benchmark to set a consistent income standard for LIPs within a given state.
- (2) As the two largest CDEs in New England, MHIC and the CDE affiliate of Coastal Enterprises (CEI Capital Management) are frequent collaborators. As MHIC has become more knowledgeable about the difficulties of investing in rural areas with the expansion of its service area, it wishes to strongly support CEI's request to revise the "county-based" criteria for distinguishing non-metro from metropolitan areas. Like CEI and other rural CDEs, MHIC recommends the use of the U.S. Department of Agriculture's (USDA) approach to defining rural tracts which under its Economic Research Service (ERS) has developed a multi-factor definition using OMB data called Rural-Urban Commuting Area Codes or RUCA. Measures of population density, urbanization, and daily commuting are used to identify metropolitan, micropolitan, and small-town urban cores, adjacent tracts that are economically integrated with those cores, and outlying rural tracts. The use of census tracts instead of counties provides a different, more robust, and more detailed geographic pattern snapshot that ties much more closely to how NMTC defines distressed low-income communities.

MHIC thanks you for the opportunity to comment on the NMTC application and other program issues.

Sincerely,



Joseph Flatley
President